

HOUSE BILL No. 1502

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-41; IC 36-2-14-6.

Synopsis: Public health issues. Requires the state department of health to include Creutzfeldt-Jakob disease as a communicable disease, and requires specified persons to report a diagnosis of the disease. Requires a county coroner to perform an autopsy on an individual with a suspected diagnosis of Creutzfeldt-Jakob disease. Provides that the consent of a patient or the patient's representative to HIV screening may be either oral or in writing. Provides that an employee is entitled to an isolation or quarantine employment leave under certain circumstances. Protects an employee's employment and benefit rights during an isolation or quarantine employment leave. Provides that an employee who is denied isolation or quarantine employment leave may bring a civil action against an employer to enforce the rights of the employee to isolation or quarantine employment leave. Encourages the state department of health to implement a pilot program at hospitals or outpatient clinics to test specified individuals for HIV.

Effective: July 1, 2007.

Orentlicher, Welch

January 23, 2007, read first time and referred to Committee on Public Health.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1502

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-54.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: **Sec. 54.2. "Child", for purposes of**
4 **IC 16-41-9.5, has the meaning set forth in IC 16-41-9.5-1.**

5 SECTION 2. IC 16-18-2-113.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2007]: **Sec. 113.5. "Employee", for purposes**
8 **of IC 16-41-9.5, has the meaning set forth in IC 16-41-9.5-2.**

9 SECTION 3. IC 16-18-2-113.7 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2007]: **Sec. 113.7. "Employee benefits", for**
12 **purposes of IC 16-41-9.5, has the meaning set forth in**
13 **IC 16-41-9.5-3.**

14 SECTION 4. IC 16-18-2-114 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 114. "Employer", for
16 purposes of:

17 **(1) IC 16-41-9.5, has the meaning set forth in IC 16-41-9.5-4;**

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and

(2) IC 16-41-11, has the meaning set forth in IC 16-41-11-1.

SECTION 5. IC 16-18-2-194.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 194.7. "Isolation or quarantine employment leave", for purposes of IC 16-41-9.5, has the meaning set forth in IC 16-41-9.5-5.**

SECTION 6. IC 16-18-2-266.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 266.3. "Parent", for purposes of IC 16-41-9.5, has the meaning set forth in IC 16-41-9.5-6.**

SECTION 7. IC 16-18-2-337.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 337.5. "Spouse", for purposes of IC 16-41-9.5, has the meaning set forth in IC 16-41-9.5-7.**

SECTION 8. IC 16-41-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The state department may adopt rules under IC 4-22-2 that do the following:

(1) Define and classify the following:

(A) Communicable diseases.

(B) Other diseases that are a danger to health based upon the characteristics of the disease.

(2) Establish reporting, monitoring, and preventive procedures for communicable diseases.

(b) The state department shall:

(1) include Creutzfeldt-Jakob disease as a communicable disease in the rules adopted under subsection (a); and

(2) require a person who:

(A) has performed an autopsy on an infected individual; or

(B) is described in section 2 of this chapter;

to report the diagnosis in the manner described in section 2 of this chapter.

SECTION 9. IC 16-41-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as provided in IC 16-41-10-2.5 and subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to HIV without the **oral or written** consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of

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1 this chapter to consent to the test.

2 (b) The test for the antibody or antigen to HIV may be performed if
3 one (1) of the following conditions exists:

4 (1) If ordered by a physician who has obtained a health care
5 consent under IC 16-36-1 or an implied consent under emergency
6 circumstances and the test is medically necessary to diagnose or
7 treat the patient's condition.

8 (2) Under a court order based on clear and convincing evidence
9 of a serious and present health threat to others posed by an
10 individual. A hearing held under this subsection shall be held in
11 camera at the request of the individual.

12 (3) If the test is done on blood collected or tested anonymously as
13 part of an epidemiologic survey under IC 16-41-2-3 or
14 IC 16-41-17-10(a)(5).

15 (4) The test is ordered under section 4 of this chapter.

16 (5) The test is required or authorized under IC 11-10-3-2.5.

17 (c) A court may order a person to undergo testing for HIV under
18 IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

19 SECTION 10. IC 16-41-9.5 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2007]:

22 **Chapter 9.5. Isolation or Quarantine Employment Leave**

23 **Sec. 1. As used in this chapter, "child" means an individual who**
24 **is:**

25 (1) the biological child of an employee;

26 (2) the adopted child of an employee;

27 (3) the foster child of an employee;

28 (4) the stepchild of an employee;

29 (5) the ward of an employee; or

30 (6) placed in the proposed adoptive home of an employee
31 under IC 31-19-7.

32 **Sec. 2. As used in this chapter, "employee" means an individual**
33 **who performs services of employment as defined in IC 22-4-8-1(a).**

34 **Sec. 3. As used in this chapter, "employee benefits" means**
35 **benefits, other than salary or wages, provided to or made available**
36 **to an employee by an employer, including but not limited to group**
37 **life insurance, health insurance, disability insurance, or a pension,**
38 **or any combination of these benefits, regardless of whether benefits**
39 **are provided by a policy or practice of the employer.**

40 **Sec. 4. As used in this chapter, "employer" means:**

41 (1) an individual;

42 (2) a partnership;

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- (3) an association;
- (4) a limited liability company;
- (5) a corporation;
- (6) a business trust;
- (7) a municipal corporation (as defined in IC 36-1-2-10); or
- (8) the state.

Sec. 5. As used in this chapter, "isolation or quarantine employment leave" means an absence from an employee's employment that is taken to carry out a responsibility or obligation described in section 8 of this chapter.

Sec. 6. As used in this chapter, "parent" refers to:

- (1) a biological parent;
- (2) a foster parent;
- (3) an adoptive parent;
- (4) a mother-in-law;
- (5) a father-in-law;
- (6) a stepparent; or
- (7) a legal guardian.

Sec. 7. As used in this chapter, "spouse" means the individual to whom an employee is married.

Sec. 8. Subject to sections 12 and 13 of this chapter, an employee is entitled to take isolation or quarantine employment leave from the employee's employment for any part of a day or days to do one (1) or more of the following:

- (1) Comply with an order of isolation or quarantine of the employee issued under IC 16-41-9-1.5.
- (2) Provide care and supervision for a child, parent, or spouse of the employee who is under an order of isolation or quarantine issued under IC 16-41-9-1.5.
- (3) Accompany the employee's child, parent, or spouse or appear in the place of the employee's child, parent, or spouse at a court hearing under IC 16-41-9-1.5(b) through IC 16-41-9-1.5(c).

Sec. 9. This chapter does not mandate that salary or wages be paid to an employee who is on isolation or quarantine employment leave unless the salary or wages are paid under any of the following:

- (1) An agreement between the employer and the employee.
- (2) A labor contract between the employer and a representative of the employee.
- (3) A policy of the employer.

Sec. 10. This chapter does not prohibit an employee from taking

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leave granted under any of the following:

(1) Another law.

(2) A contractual agreement between the employee and employer or a representative of the employee and the employer.

(3) A policy of the employer.

Sec. 11. (a) During the time an employee is on isolation or quarantine employment leave, the employer shall continue to provide employee benefits to the employee at the employee's expense. The employer and the employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the isolation or quarantine employment leave.

(b) Taking isolation or quarantine employment leave may not result in the loss of an employee benefit accrued before the date the leave began.

(c) This chapter shall not be construed to affect or diminish the contract rights or seniority status of another employee of an employer covered under this chapter.

(d) The isolation or quarantine employment leave rights provided under this chapter may not be diminished by:

(1) a collective bargaining agreement; or

(2) an employee benefit plan.

Sec. 12. An employer and an employee may agree to alternative employment conditions or terms during the time the employee is on isolation or quarantine employment leave. An agreement under this section does not limit an employee's right to isolation or quarantine employment leave.

Sec. 13. If an employee takes isolation or quarantine employment leave under section 8 of this chapter, the employer may require the employee to provide certification of the reason for the absence by providing a copy of an order of isolation or quarantine issued under IC 16-41-9-1.5.

Sec. 14. If an employee takes isolation or quarantine employment leave in compliance with section 8 of this chapter and subsequently returns to work, the employee's employer shall immediately do one (1) of the following upon the employee's return to work:

(1) Return the employee to the position of employment that the employee had before the employee took the isolation or quarantine employment leave if the employer has not filled or eliminated the employee's previous position.

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(2) Place the employee in another position of employment that provides compensation, benefits, working hours, working shifts, and other terms and conditions equivalent to the position of employment that the employee had before the employee took the isolation or quarantine employment leave if the employer has filled the employee's previous position.

Sec. 15. (a) An employer shall not:

- (1) interfere with;
- (2) restrain; or
- (3) deny;

the exercise of or the attempt to exercise a right provided under this chapter.

(b) The prohibitions in this section include discharging, fining, suspending, disciplining, or discriminating against an employee who takes isolation or quarantine employment leave.

Sec. 16. (a) An employee who is denied isolation or quarantine employment leave may bring a civil action against an employer to enforce the rights of the employee under section 8 of this chapter.

(b) If an employer is found to have denied isolation or quarantine employment leave to an employee entitled to isolation or quarantine employment leave, the court may do the following:

(1) Award:

- (A) actual damages; and
- (B) court costs and reasonable attorney's fees; to the prevailing employee.

(2) Enjoin further violations of this chapter.

SECTION 11. IC 36-2-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Whenever the coroner is notified that a person in the county:

- (1) has died from violence;
- (2) has died by casualty;
- (3) has died when apparently in good health;
- (4) has died in an apparently suspicious, unusual, or unnatural manner; or
- (5) has been found dead;

he shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area. The agency shall assist the coroner in conducting an investigation of how the person died and a medical investigation of the cause of death.

(b) The coroner shall file with the person in charge of interment a coroner's certificate of death within seventy-two (72) hours after being notified of the death. If the cause of death is not established with

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reasonable certainty within seventy-two (72) hours, the coroner shall file with the person in charge of interment a coroner's certificate of death, with the cause of death designated as "deferred pending further action". As soon as he determines the cause of death, the coroner shall file a supplemental report indicating his exact findings with the local health officer having jurisdiction, who shall make it part of his official records.

(c) If this section applies, the body and the scene of death may not be disturbed until the coroner has photographed them in the manner that most fully discloses how the person died. However, a coroner or law enforcement officer may order a body to be moved before photographs are taken if the position or location of the body unduly interferes with activities carried on where the body is found, but the body may not be moved from the immediate area and must be moved without substantially destroying or altering the evidence present.

(d) When acting under this section, if the coroner considers it necessary to have an autopsy performed, is required to perform an autopsy under ~~subsection~~ **subsections (f) through (g)**, or is requested by the prosecuting attorney of the county to perform an autopsy, the coroner shall employ a physician:

- (1) certified by the American board of pathology; or
- (2) holding an unlimited license to practice medicine in Indiana and acting under the direction of a physician certified by the American board of pathology;

to perform the autopsy. The physician performing the autopsy shall be paid a fee of at least fifty dollars (\$50) from the county treasury. A coroner may employ the services of the medical examiner system, provided for in IC 4-23-6-6, when an autopsy is required, as long as this subsection is met.

(e) If:

- (1) at the request of:
 - (A) the decedent's spouse;
 - (B) a child of the decedent, if the decedent does not have a spouse;
 - (C) a parent of the decedent, if the decedent does not have a spouse or children;
 - (D) a brother or sister of the decedent, if the decedent does not have a spouse, children, or parents; or
 - (E) a grandparent of the decedent, if the decedent does not have a spouse, children, parents, brothers, or sisters;
- (2) in any death, where two (2) or more witnesses who corroborate the circumstances surrounding death are present; and

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(3) two (2) physicians who are licensed to practice medicine in the state and who have made separate examinations of the decedent certify the same cause of death in an affidavit within twenty-four (24) hours after death; an autopsy need not be performed. The affidavits shall be filed with the circuit court clerk.

(f) A county coroner may not certify the cause of death in the case of the sudden and unexpected death of a child who is at least one (1) week old and not more than three (3) years old unless an autopsy is performed at county expense. However, a coroner may certify the cause of death of a child described in this subsection without the performance of an autopsy if subsection (e) applies to the death of the child.

(g) A county coroner may not certify the cause of death in the case of an individual who has a suspected diagnosis of Creutzfeldt-Jakob disease unless an autopsy is performed at county expense. The county coroner shall report a confirmed diagnosis of Creutzfeldt-Jakob disease to the state department of health as required in IC 16-41-2-1(b).

SECTION 12. [EFFECTIVE JULY 1, 2007] (a) As used in this SECTION, "state department" refers to the state department of health established by IC 16-19-1-1.

(b) The state department is encouraged to establish a pilot program that would test patients who are:

(1) at least thirteen (13) years of age; and

(2) not more than sixty-four (64) years of age;

for HIV at hospitals or outpatient clinics in accordance with the federal Centers for Disease Control and Prevention recommendations published in 2006.

(c) The pilot program should be established at hospitals or outpatient clinics that provide services to patients:

(1) with diverse socioeconomic backgrounds; and

(2) that are representative of Indiana's population.

(d) This SECTION expires December 31, 2010.

SECTION 13. [EFFECTIVE JULY 1, 2007] (a) IC 16-41-9.5, as added by this act, does not excuse noncompliance with a provision of a collective bargaining agreement or other employment benefit program or plan in effect on July 1, 2007, that is not in substantial conflict with IC16-41-9.5, as added by this act. IC 16-41-9.5, as added by this act, does not justify an employer in reducing employment benefits provided by the employer that are in excess of the benefits required by IC 16-41-9.5, as added by this act.

(b) This SECTION expires July 1, 2009.

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